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REMARKS

Claims 1-40 are pending and Applicants herewith amend independent claims 1, 17, and 28-33. No new claims are added and no claim is canceled.

Applicants respectfully request entry and favorable consideration of the amendments and remarks contained herein.

Claim Rejections Under 35 U.S.C. §103

Claims 1, 2, 4-13, 15-18, 20-34 and 36-38 stand rejected under 35 U.S.C. §103(a) as unpatentable over the '428 patent to Obel et al. (Obel) in view of the '328 patent to Levine et al. (Levine).

Applicants respectfully assert that suggestion or motivation to combine Obel with Levine is present in either reference. In fact, Levine only mentions the notion of neurological stimulation once; and even then only in the context of ***avoiding neurological stimulation***; to wit (from col. 31, lines 9-28):

It is also possible to program to the VDD mode in the presence of high atrial capture thresholds if the patient has high grade AV block, and only rarely or never needs AV pacing at the programmed base rate, thus forgoing atrial pacing in an effort to reduce battery current drain or ***avoid extracardiac muscle stimulation (such as the diaphragm via the phrenic nerve*** or direct stimulation of the pectoral muscle). An option may also be provided to disable the Preemptive tachyarrhythmia pacing algorithm when pacing in the VDD mode. **(emphasis added.)**

Since Levine actually can be seen to *teach away* from the notion of implementing neurological stimulation. Accordingly, Applicants request that the Examiner withdrawn the rejection of claims 1, 2, 4-13, 15-18, 20-34 and 36-38 based upon Obel and Levine.

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Claims 1, 2, 4-13, 15-18, 20-34 and 36-38 stand rejected under 35 U.S.C. §102(b) as anticipated by Obel in view of the '098 patent to Bennett et al. (Bennett).

The Examiner has essentially restated the rejection based on Obel and Levine by substituting Bennett in lieu of Levine. However, Applicants respectfully point out that Bennett is devoid of any disclosure regarding overdrive pacing; and, in fact the typical effect of the post-extrasystolic potentiation (PESP) therapy described and claimed in Bennett is to **halve the heart rate** (relative to a prior non PESP therapy delivery heart rate).

Thus, not only is Bennett devoid of any support for adding overdrive pacing it is fact teaches away from increasing heart rates via pacing therapy delivery.

Accordingly, Applicants request that the Examiner withdrawn the rejection of claims 1, 2, 4-13, 15-18, 20-34 and 36-38 based upon Obel and Bennett.

Claims 3, 19, and 39 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Obel in view of Levine in further view of the '187 patent to Adams (Adams).

The remarks provided above regarding the proposed combination of Obel and Levine are incorporated as if set forth herein. That is, in essence, because Levine teaches away from providing neurostimulation in conjunction with providing a pacing therapy, the combination of Obel and Levine fails at achieving even the initial threshold for providing a *prima facie* obviousness rejection.

In addition, the rejected claims depend directly or indirectly from one of the independent claims and neither Obel nor Adams includes any disclosure or teaching regarding PESP or overdrive pacing therapy delivery. According, the combination of Obel, Levine, and Adams cannot form a *prima facie* obviousness rejection and should be withdrawn.

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Claims 14, 35, and 40 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Obel in view of Levine in further view of the '377 patent to Sweeney et al. (Sweeney).

The remarks provided above regarding the proposed combination of Obel and Levine are incorporated as if set forth herein. That is, in essence, because Levine teaches away from providing neurostimulation in conjunction with providing a pacing therapy, the combination of Obel and Levine fails at achieving even the initial threshold for providing a *prima facie* obviousness rejection.

The rejected claims depend directly or indirectly from one of the independent claims and neither Obel nor Sweeney includes any disclosure or teaching regarding PESP or overdrive pacing therapy delivery. According, the combination of Obel and Sweeney cannot form a *prima facie* obviousness rejection and should be withdrawn.

Furthermore, the claims include limitations regarding improving symptoms for ventricular dysfunction, heart failure, imbalances of autonomic tone, and imbalances of the neuro-endocrinological system. In contrast, none of the cited and applied references provides such a prophylactic therapy regimen and also cannot support a rejection of the claimed invention.

Conclusion

Applicants respectfully suggest that all pending claims are in condition for allowance and the Examiner is earnestly solicited to issue a Notice of Allowance in due course. Finally, if there are any formal matters remaining after this

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response, the Examiner is requested to telephone the undersigned attorney to attend to these matters.

Respectfully submitted,

Date:

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